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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,807	11/12/2003	Mark Kiff	5610	6972

7590 06/06/2005

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EXAMINER
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JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/706,807

Applicant(s)

KIFF, MARK

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-18 is/are pending in the application.  
4a) Of the above claim(s) 18 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 14-17 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/03.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of claims 14-18 in the reply filed on March 7, 2005 is acknowledged. Claims 1-13 have been cancelled.
2. Although claim 18 was grouped with method claims 14-17, said claim is drawn to a product and should have been grouped with product claims 1-13. As such, claim 18 is hereby withdrawn as non-elected since applicant has elected the method claims for prosecution.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 14 is rejected under 35 U.S.C. 102(e) as being anticipated by US 6,494,925 issued to Child et al.

Applicant claims a method comprising (a) providing a pile fabric, (b) providing dye in an unfixed state into the yarns of the pile fabric, (c) etching said fabric in a pattern by applying a yarn-degrading composition to form pile of a lesser height than the non-etched pile height, and (d) fixing said dye. Said method produces a fabric having two pile heights and a substantial

Art Unit: 1771

color contrast between the second etched region and the first non-etched regions. Said color contrast is measured by  $\Delta L^*$  value and is preferably at least about 25%. In a second embodiment, a mask is applied to selectively cover first non-etched regions. Additionally, a step of heating the fabric is performed to fix the unfixed dye. The fabric may be processed with an additional mask to etch a third region having a different pile height and color intensity.

Child discloses a method of making a sculpted pile fabric including the steps of (a) contacting the surface of said pile fabric with a fiber degrading agent in a desired pattern, (b) selectively applying a first dye in a pattern in registry with the fiber degrading agent, (c) heating the pile fabric to degrade the fibers and to fix the dye (abstract and col. 3, lines 1-11). Child applies a second dye to the overall surface to produce a first pile height region having a different color than the second lesser height pile region (Figure 1 and col. 3, lines 33-51). Thus, Child anticipates claim 14.

5. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by US 4,353,706 issued to Burns, Jr. et al.

Burns disclose a process for sculpting a pile fabric by application of a fiber degrading composition (abstract). The treatment of said pile by said composition results in differential dyeability characteristics (col. 3, lines 34-52). The sculpted pile may be dyed with only one dye or with a plurality of dyes to produce an enhanced visual appearance due to said differential dyeability. The dye or dyes may be applied to the entire fabric or in a printed pattern (col. 6, lines 25-37). The degrading composition may be part of the dye composition (col. 6, lines 25-29). Said dye composition may be applied by any known printing apparatus (col. 6, lines 51-55). The pile fabric is heated to cause degradation of the fibers and to fix the dye (col. 7, lines 22-24).

Art Unit: 1771

Afterwards, the fabric may be washed to remove any residue (col. 7, lines 38-40). If the dye is applied in a pattern with the degrading composition, a color contrast is obtained between the pile regions of differing heights. Thus, Burns anticipates claim 14.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as obvious over the cited Child or Burns patents.

Child and Burns fail to explicitly teach the claimed  $\Delta L^*$  value. However, it is argued that said value is obvious over the cited prior art teachings. Specifically, it would have been obvious to one skilled in the art to select dye colors and concentrations in order to achieve a desired contrast effect for aesthetic purposes. It has been held that matters relating to ornamentation only which have no mechanical function cannot serve to patentably distinguish the claimed invention from the prior art. *In re Seid*, 73 USPQ 431. Therefore, claim 15 is rejected.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as obvious over the cited Child or Burns patents.

Although Child and Burns do not explicitly teach the use of a mask to selectively treat the pile fabric, said use is well known in the art. Applicant is hereby given Official Notice of this fact. Additionally, it is noted that Burns teaches printing the pile fabric with the dye and

Art Unit: 1771

degrading composition by any known conventional means. This would include screen printing which meets applicant's claim limitations of a mask. Thus, it would have been readily obvious to one skilled in the art to employ a mask in order to selectively degrade and/or print the fabric in a desired pattern. Therefore, claim 16 is rejected.

9. Claims 17 is rejected under 35 U.S.C. 103(a) as obvious over the cited Child or Burns patents.

Although neither patent teaches a third region, it would have been readily obvious to one skilled in the art to treat a third region in order to produce a pile fabric having a variety of heights and colors. Such a product would be aesthetically pleasing to a consumer. Therefore, claim 17 is also rejected.

### ***Conclusion***

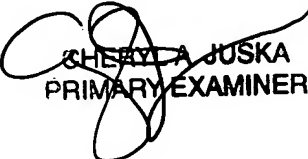
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

Art Unit: 1771

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
May 31, 2005